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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ALFREDO BANUELOS,

Defendant and Appellant.

E070555

(Super.Ct.No. RIF1602073)

OPINION

APPEAL from the Superior Court of Riverside County. Steven G. Dounelis,
Judge. Affirmed.

Thien Huong Tran, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Alfredo Banuelos was charged by third amended information with resisting arrest (Pen. Code,¹ § 69, counts 1-2), misdemeanor battery of an officer (§ 243, subd. (b), counts 3-5), and robbery (§ 211, count 6).² It was also alleged that defendant committed counts 1 and 2 for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)(A)), that he committed count 6 while out on bail (§ 12022.1), that he had served three prior prison terms (§ 667.5, subd. (b)), and that he had one prior strike conviction (§§ 667, subds. (c) & (e)(1), 1170.12, subd. (c)(1)). Defendant filed a *Pitchess*³ motion, seeking evidence of any complaints of excessive force or aggressive conduct by one of the police officers involved here. The court granted the motion and conducted an in camera hearing, but found no discoverable items. Subsequently, a jury found defendant guilty of counts 3 through 5. The jury hung on the remaining charges, and the court declared a mistrial as to them.

Subsequently, the People filed a fourth amended information charging defendant with the two counts of resisting arrest (§ 69, counts 1-2) and one count of grand theft of a person (§ 487, subd. (c), count 6), as well as the previously alleged gang enhancement, out-on-bail enhancement, prior prison allegations, and prior strike allegation. Defendant

¹ All further statutory references will be to the Penal Code, unless otherwise noted.

² The robbery charged in count 6 stemmed from a separate case (case No. RIF1606164), which was consolidated with the instant case (case No. RIF1602073) on motion of the People.

³ *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

entered a plea agreement and pled guilty to all counts and the out-on-bail enhancement, admitted the gang enhancement, and admitted the prior strike. The court dismissed the prior prison allegations. Prior to sentencing, defendant moved to withdraw his plea, but the court denied the motion. The court then sentenced him to a total of eight years in state prison, in accordance with the plea agreement. The sentence consisted of four years on count 1, plus a consecutive two years on the gang enhancement; a concurrent four years on count 2; a concurrent four years on count 6; and a consecutive two years on the out-on-bail enhancement. For the three misdemeanor assault convictions (counts 3-5), the court imposed 364 days of jail time on each, to run concurrent to count 1, and then stayed the sentence on count 3, pursuant to section 654.

Defendant filed a timely notice of appeal challenging the validity of the plea, along with a request for certificate of probable cause, which was granted. We affirm.

FACTUAL BACKGROUND

Case No. RIF1602073

On April 30, 2016, Officer Wood responded to a call regarding a disturbance of the peace by two intoxicated males at a taco restaurant. When he arrived at the scene, he saw two males who matched the description of the suspects, one of which was defendant. They were walking in the restaurant parking lot. The officer approached them and asked them to sit on the curb. Defendant kept walking, so the officer ordered him to sit down. Defendant said, “What for?” Officer Wood realized defendant was not going to listen, so he put his hand on defendant’s shoulder to direct him to the curb. Defendant immediately

pulled back and smacked the officer's arm away and threw his food at him. Officer Wood anticipated a physical confrontation, so he pulled out his baton. He was about to strike defendant, but a backup officer (Officer Southern) arrived, pushed defendant away from Officer Wood, and ordered defendant to sit down. Officer Southern told defendant to put his hands behind his back, but defendant refused to comply. Defendant started yelling and cursing at Officer Southern. Officer Southern kept telling him to put his hands behind his back, told him he was under arrest, and informed him he would be charged with resisting arrest if he did not comply. Defendant still refused to comply and challenged the officer to take his badge off and "see what happens." Officer Southern understood that to mean defendant was challenging him to a fight. The officer kept repeating his command, but defendant's response was, "whatever." Officer Southern called for backup.

Defendant then made some comments to Officer Southern, which the officer understood to be threats of physical violence. When the backup officers arrived, defendant was sitting on the curb. He started to stand up, although no one asked him to. Officer Southern thought defendant was going to start a fight, so he lunged forward and grabbed the side of defendant's neck. He pushed defendant's head to the ground, straddled over the top of his back to hold him down, and put handcuffs on him. Officer Southern started to walk defendant to his patrol car, but he began to stumble because defendant was trying to trip him. He told the other officers to put the total appendage restraint procedure (TARP) on defendant. (The TARP is a restraint device used to tie

people's feet together, so they cannot use their feet as a weapon or try to escape.)

Defendant resisted by stiffening up his torso, so Officer Southern had to knee him in the stomach to get him to bend forward. Once the officers placed the TARP on defendant, they stood him up and placed him in the police car.

The officers drove defendant to the hospital to get a medical clearance, which was required before booking, since the TARP was applied. On the way, defendant was yelling, cursing, and banging his head on the partition between the front and backseat. Once they arrived at the hospital, defendant refused to get out of the police car. The officers had to physically pull him out of the car and put him in a wheelchair. Defendant kept yelling, cursing, screaming, and not complying with commands. At one point, he spit on Officer Southern. Once defendant was cleared at the hospital, he was transported and booked in the county jail.

Case No. RIF1606164

On December 15, 2016, T.S. was walking to El Pollo Loco, when she ran into defendant on the street. T.S. and defendant had dated for about six months, but ended their relationship four months prior. Defendant stopped in front of her and said he wanted to get back together with her. She said she did not want to get back together and told him to leave her alone. T.S. kept walking, and he followed her and kept talking to her. When she arrived at El Pollo Loco, she sat at a table, and he sat down with her. She told him to go away, but he just sat there. T.S. stood up and looked at her phone, and they started arguing. Defendant pulled on her phone, and she pulled back. They fought

over the phone until defendant overpowered her, and she dropped it. Defendant took the phone and walked away with it. T.S. used the restaurant phone to call the police. She never got her phone back.

DISCUSSION

Defendant appealed and, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case and two potential arguable issues: (1) whether the court abused its discretion in denying his motion to withdraw his plea; and (2) whether defendant may challenge the validity of his plea on the basis that he pled guilty to felony grand theft when there was no evidence the item taken was worth over \$950. Counsel has also requested this court to undertake a review of the entire record.

Counsel specifically requested this court to review the record of the in camera proceedings to determine whether the trial court followed the proper procedures when conducting the *Pitchess* motion hearing and whether it abused its discretion in ruling that none of the records were discoverable. Because the record did not include copies of the documents produced, we ordered augmentation of the record. The subject records of the in camera hearing were provided to us under seal, and our review of the materials revealed no discoverable information.

We offered defendant an opportunity to file a personal supplemental brief, which he has not done.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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McKINSTER

Acting P. J.

We concur:

MILLER

J.

RAPHAEL

J.